LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
DEC 17 1954
HAROLD B. WILLEY, Clerk

No. 19

In the Supreme Court of the United States

OCTOBER TERM, 1954

MASTRO PLASTICS CORP., and FRENCH-AMERICAN REEDS MFG. CO., INC., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

SIMON E. SOBELOFF,
Solicitor General,
Department of Justice,
Washington 25, D. C.

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
HARVEY B. DIAMOND,
Attorney
National Labor Relations Board,
Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement:	
I. The Board's findings of fact	2
II. The Board's conclusions of law	8
III. The Board's order	9
IV. The decision below	10
Argument	12
Conclusion	18
Appendix	19

CITATIONS

Cases:

S. H. Camp & Co. v. *National Labor Relations Board*, 160 F. 2d 519	15
Local No. 3, United Packinghouse Workers v. *National Labor Relations Board*, 210 F. 2d 325, certiorari denied October 14, 1953	16
National Labor Relations Board v. *Rockaway News Co.*, 345 U. S. 71	18
Schwegmann Bros. v. *Calvert Distillers Corp.*, 341 U. S. 384	15

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*):	
Section 7	19
Section 8(a)(1)	19
Section 8(a)(2)	19
Section 8(a)(3)	19
Section 8(d)	12-14, 15, 20

Miscellaneous:

93 Cong. Rec. 3839, in 2 Leg. Hist. 1015	15
93 Cong. Rec. 4036, 6503, in 2 Leg. Hist. 1049, 1580	15
93 Cong. Rec. 5014, in 2 Leg. Hist. 1496	15
93 Cong. Rec. 6385, in 1 Leg. Hist. 887	15

Miscellaneous—Continued

Page

H. R. 3020, 80th Cong., 1st Sess., Sec. 12(a)(3)(C)(ii), in 1 Leg. Hist. 205-207 16

H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 34-35, in 1 Leg. Hist. 538-539 15

H. Rep. No. 245 on H. R. 3020, 80th Cong., 1st Sess., pp. 44, 95, in 1 Leg. Hist. 335, 386 16

S. 360, 80th Cong., 1st Sess., Sec. 13(b)(2) (Jan. 27, 1947) 16

S. Min. Rep. No. 105, 80th Cong., 1st Sess., 21-22, in 1 Leg. Hist. 483-484 15

S. Rep. No. 105, 80th Cong., 1st Sess., 24, in 1 Leg. Hist. 430 15

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 454

MASTRO PLASTICS CORP., and FRENCH-AMERICAN REEDS MFG. CO., INC., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. B1-8) is reported at 214 F. 2d 462. The findings of fact, conclusions of law and order of the Board (B.A. 4-119)[1] are reported at 103 NLRB 511.

JURISDICTION

The decree of the court below was entered on August 19, 1954 (Pet. A1-8). The petition for a

[1] "B.A." references are to the appendix to the Board's brief in the court of appeals; "P.A." references are to the appendix to petitioners' (respondents below) brief in the court of appeals.

writ of certiorari was filed on November 19, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the 60-day "waiting period" prescribed by Section 8(d) of the National Labor Relations Act, as amended, applies to employees who engage in a strike, the purpose of which is not to terminate or modify an existing contract but to protest and remedy unfair labor practices committed by the employer.

2. Whether the Board and the court below properly found that the "no-strike" clause in the agreement between the employer and the union in the instant case did not constitute a waiver of the employees' right to strike in protest against unfair labor practices committed by the employer.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 19-22.

STATEMENT

I. The Board's Findings of Fact

Petitioners, although separate corporations, operate within the same plant premises and utilize the services of the same employees and supervisory staff (B.A. 35-36; 124, 160, 191, 249, 250, 256, 295). Mario Maccaferri is president of both companies, and his wife, Maria, is vice president and an active supervisor (B.A. 36; 182, 249-250; P.A. 583). In

1949 and 1950, petitioners' employees were represented for the purposes of collective bargaining by Local 22045, a federal labor union affiliated directly with the American Federation of Labor, hereafter called the Carpenters (B.A. 37; 127-129).[2] The current contract between petitioners and the Carpenters, which was to expire on November 30, 1950, contained the following no-strike and arbitration provisions (P.A. 1004-1015, 1006, 1011, 1014):

> 5. The Union agrees that during the term of this agreement, there shall be no interference of any kind with the operations of the Employers, or any interruptions or slackening of production of work by any of its members. The Union further agrees to refrain from engaging in any strike or work stoppage during the term of this agreement.
>
> * * * * *
>
> 19. DISPUTES:
>
> (a) Should differences arise between either of the Employers and the Union or its members as to the meaning and application of the

[2] Local 22045 and Local 3127, United Brotherhood of Carpenters and Joiners of America, AFL, occupy the same business office and utilize the services of the same representatives (B.A. 36; 126-127). The right to represent petitioners' employees was transferred back and forth between the two unions, usually for reasons not here pertinent (B.A. 36-37, 54-55; 125-129, 144-146). The court below treated the two Locals as a single labor organization (Pet. B-3, n. 1). We shall do the same and refer to them jointly as the "Carpenters."

> provisions of this agreement, including questions of meaning, interpretations, operation or application of any clause of this agreement or any breach of [*sic*] threatened breach of this agreement, such differences may be referred by either party, by giving one (1) week's written notice by registered mail to the other party, to a Conference Committee to settle such matter within one (1) week thereafter, either party may refer the matter to arbitration, as hereinafter provided. * * * The decisions of the Arbitration Board shall be binding upon the parties hereto and may be enforced by appropriate action in a Court of Law and Equity.

In August 1950, Local 65 of the Wholesale and Warehouse Workers Union instituted an organizational campaign among petitioners' employees (B.A. 39; 130, 138-141). Petitioners were opposed to the possible entry of Local 65 into the plant as they considered it to be a Communist-controlled union. They were concerned that Carpenters was not strong enough to cope with the organizational drive of Local 65, and decided to find other means to keep that organization out of the plant. (B.A. 39-40; 132, 250-256, 268.) Accordingly, in September 1950 they sought out Local 318, International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL (herein called "Paper Workers"), and invited that organization to take over the representation of the employees (B.A. 40; 133-138,

217-219, 251-253, 268; P.A. 785-788). Petitioners first attempted to achieve this result by inducing Carpenters to surrender its bargaining rights to the Paper Workers; if necessary, Carpenters was to be "compensated" for its withdrawal (B.A. 41; P.A. 46-47, 77-78). When Carpenters rejected this proposal, petitioners decided to achieve the desired result by themselves organizing the employees into the Paper Workers. Petitioners selected a committee of employees to visit the office of the Paper Workers to obtain membership cards and instructions for their completion (B.A. 44-45; 154-156, 170-171). Petitioners then directed the members of the committee, and several other employees, to distribute the cards among the workers in the plant during working hours and to have them signed immediately (B.A. 45-49; 156-159, 172-175, 184-187, 205-208, 210-211). Petitioners paid the committee for the time spent on behalf of the Paper Workers, and also paid several other employees for attending a meeting of that organization (B.A. 46, 54; 158-159, 174-175, 232-234, P.A. 343-344). Petitioners' officers and supervisors themselves participated in this organizing campaign, instructing employees to sign cards, and indicating that any who refused could "get out" (B.A. 45, 49-52; 159-162, 172, 175-178, 184-187, 210-212, 229-230, 240-242, 244-245, 265). The campaign quickly achieved its purpose; by October 23 a majority of the employees had signed cards designating the Paper Workers as their bargaining representative (B.A. 52; 129, P.A. 340, 492, 540, 800).

Although the employees had signed cards designating the Paper Workers as their representative under the pressure imposed by petitioners, outside the plant they clearly indicated that their true desires were to remain with the Carpenters. At a series of meetings held by the Carpenters the employees revoked their designations in favor of the Paper Workers and reaffirmed their adherence to the Carpenters (B.A. 54-56; 144-146). They also instructed the bargaining committee to continue to press for a new contract and for certain provisions to be contained therein (B.A. 55; 145-146).

The Carpenters on October 10 had served upon petitioners a letter requesting renegotiation and modification of the existing contract (B.A. 5, 104; 135, 300-301). Petitioners met with the Carpenters' representatives several times and listened to their proposals, but no bargaining concerning the new contract ever took place (B.A. 40-41, 55; 130-133, 145).

Meanwhile, petitioners continued in their efforts to force the employees into the Paper Workers and thereby displace the Carpenters as the bargaining representative. On November 10 the situation reached an explosive climax because of the discriminatory discharge of employee Frank Ciccone. The latter had been employed by petitioners as a machinist and maintenance mechanic for about four and one half years (B.A. 57; 203). He was considered an able and conscientious worker, whose duties required him to go into various departments in the plant to repair machines (B.A. 57; 204, 255, 259). But Ciccone was in the forefront of the

employees who opposed petitioners' attempts to establish the Paper Workers as bargaining agent, was quite outspoken about his views on that subject, and actively engaged in the drive to recruit additional employees into the Carpenters (B.A. 58; 188, 197, 200, 202, 209, 213-216, 218). On November 10, President Maccaferri, who had learned of Ciccone's activities (B.A. 58-59; 189, 216-217, 255), confronted him in the plant and upbraided him for his recruitment of employees into the Carpenters (B.A. 60; 222-223). Maccaferri then ordered Ciccone to remain in the machine shop and not to perform further any maintenance services in other parts of the plant (*ibid.*).

A few hours later, during their customary rest period, Ciccone and four other machinists decided to buy drinks at a Coca Cola vending machine located in a distant portion of the plant (B.A. 61; 190, 223, 270-271). Upon learning that Ciccone had left the machine shop, Maccaferri issued instructions that Ciccone be discharged at once (B.A. 62-63; 267, P.A. 552-553, 690). Ciccone was accordingly discharged and left the plant (B.A. 63; 190-191, 201, 224-226, P.A. 195-196).

A few minutes after Ciccone's discharge the other employees in the machine shop started to walk out in the belief that the dismissal was part of the plan to install the Paper Workers as their representative (B.A. 63; 191-192, 201-202, 226, P.A. 193-194). Word of what had occurred spread rapidly through the plant, and within a short time substantially all the employees had joined the strike. A picket line was set up, and by the follow-

ing morning the plant was completely closed down (B.A. 66, 73-74; 146-147, 149, 163-164, 180-181, P.A. 323-324, 415-416, 430, 466-467, 681-682, 896). During the walkout, and thereafter during the strike, Maccaferri and other supervisors repeatedly threatened employees that they would have to abandon the Carpenters, and accept the Paper Workers, if they hoped to work in the plant again (B.A. 66-73, 78-79; 163-164, 181, 194, 238, 247-248, P.A. 267, 282, 292-293, 313-315, 321-323, 418-419, 426-427, 890). Later, petitioners solicited a number of employees to abandon the strike and return to work, on condition that they accept the substitution of the Paper Workers as their bargaining representative (B.A. 78-79; 194-195, 247-248, P.A. 418-419).

On December 11, 1950, petitioners addressed letters to each of the strikers notifying him that his employment was terminated because he had gone on strike in violation of the no-strike provision in the contract (B.A. 75; 301-302). On March 9, 1951, the Carpenters made an unconditional application for reinstatement of all the strikers (B.A. 77; 152-153, 302). Petitioners did not reply to the request, nor have they reinstated the strikers subsequently found by the Board to have been illegally discharged and denied reinstatement (B.A. 16, 77; 296, P.A. 817-818).

II. The Board's Conclusions of Law

The Board found that petitioners' objective was "to have [the Paper Workers] substituted in the place and stead of [the Carpenters] as bargaining

agent" (B.A. 79). The Board found the proof "overwhelming" that, to this end, petitioners engaged in "unlawful interference with employee self-organizational rights," in violation of Section 8(a)(1) of the Act, and rendered "illegal sponsorship, assistance, and support" to the Paper Workers, in violation of Section 8(a)(2) of the Act (B.A. 79-85, 5, n. 2, 6). The Board also found that in violation of Section 8(a)(3) and (1) of the Act, petitioners discharged employee Ciccone because of his opposition to the Paper Workers and his advocacy of the Carpenters (B.A. 86-89, 6-7). The Board further found that the strike was caused by these unfair labor practices, and prolonged by petitioners' continuing unfair labor practices, and that petitioners, by discharging the strikers and thereafter refusing to reinstate them upon their unconditional request for reinstatement, further violated Section 8(a)(1) and (3) (B.A. 92, 94, 105, 7, 16). The Board rejected petitioners' assertion that the strike was in violation of the no-strike provision of the collective bargaining agreement and also in violation of Section 8(d) of the Act and hence unprotected activity (B.A. 95, 103-107, 7-16).[3]

III. The Board's Order

The Board's order requires petitioners to cease and desist from the unfair labor practices found (B.A. 17-18). Affirmatively, the order directs pe-

[3] Chairman Herzog and Member Murdock, dissenting in part, found merit in the Section 8(d) defense (B. A. 20-24), and in view of this conclusion, Member Murdock found it unnecessary to express an opinion on the contract defense (B. A. 11, n. 9).

titioners to reinstate with back pay Frank Ciccone and 76 named employees who participated in the strike; to withhold all recognition of the Paper Workers unless and until certified by the Board as the bargaining representative; and to post appropriate notices (B.A. 18-19).

IV. The Decision Below

The court below, one judge dissenting, accepted all of the Board's findings of fact and conclusions of law and enforced in full the Board's order (Pet. B2-8). Rejecting petitioners' contention that by engaging in a strike before the expiration date of the contract the employees had violated the no-strike clause and hence were not entitled to the protection of the Act, the court stated that (Pet. B4) "since the strike was caused and prolonged by the [petitioners'] unfair labor practices, we agree with the Board that it is not prohibited by the strike-waiver clause in the contract."

The court also found without merit petitioners' further contention that because the strike occurred less than 60 days after the Carpenters' formal notice to petitioners of an intent to modify the existing contract (*supra*, pp. 6, 7), the employees who struck violated the no-strike provision in Section 8(d)(4) of the Act, and thereby lost their employee status. The court said (Pet. B6-8):

> Section 8(d)(4) of the Act deals with the obligation to bargain collectively in good faith and particularly with the termination or modification of existing bargaining contracts.

> After making provision for procedures looking toward the attainment of such ends, which contain conditions applicable both to employers and employees, a sanction is imposed upon employees as a coercive measure to prevent their use of the strike either to obtain or to prevent the termination or modification of a collective bargaining contract. The "sixty-day period" is a special period during which the status quo ante is to be maintained in respect to employer-employee relationships while the statutory method for bargaining as to existing contracts set up in the subdivision is being used; and a "strike within the sixty-day period" means a strike in interference with the use of that method. In other words, it is tied to the method by the modifying words "within the sixty-day period" and that tie limits the sanction Congress imposed upon the employees involved in the use of the statutory method and excludes strikes which are still protected activities because they are unconnected with the use of the method.

The court concluded, therefore, that since the strike here "was caused solely by the unfair labor practices" of the petitioners, "and was not motivated by any purpose so to obtain any economic advantage by way of contract modification", Section 8(d) was not applicable, leaving the employees with the full protection which the Act affords unfair labor practice strikers (Pet. B6).

ARGUMENT

1. The strike in the instant case, as the Board and the court below found, and petitioners do not deny, "was caused solely by the unfair labor practices of [petitioners] and was not motivated by any purpose so to obtain any economic advantage by way of contract modification" (Pet. B6; see also B.A. 104-105). The court below correctly concluded that Section 8(d) has no application to such a strike. Petitioners, however, isolating the concluding sentence of Section 8(d) from its context, assert that the 60-day waiting period provided in that section applies to any strike without regard to whether the strike is for the purpose of protesting and remedying unfair labor practices or for advancing contract demands. This contention, as the court below held, manifestly fails to give "due consideration" to the language of Section 8(d) "as a whole," and to the Congressional purpose reflected in the Section and confirmed by its legislative history.

Analyzing Section 8(d) paragraph by paragraph, it is evident that the section is devoted entirely to the orderly functioning of the bargaining process. Dealing first with the general elements of the duty to bargain, it next specifies the particular requirements applicable to a "party desiring * * * termination or modification" of an existing agreement. Sixty days' notice of the "proposed termination or modification" must be given; an offer to meet and confer "for the purpose of negotiating a new contract or a contract contain-

ing the proposed modifications" must be made; and if no agreement is reached within thirty days, notice of the existence of the dispute must be given to federal and state conciliators and mediators. And in order that these procedures may have a fair chance to succeed, all the "terms and conditions of the existing contract" must for the sixty-day period of the notice remain "in full force and effect, without resorting to strike or lock-out." The Section further provides that "the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification" of a contract for a fixed period, if "such modification is to become effective" before the contract under its provisions can be reopened. Finally, Section 8(d) concludes with a provision that "Any employee who engages in a strike within the sixty day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of the Act * * *."

It is plain that Section 8(d), so far as here pertinent, prohibits a strike or lockout for sixty days, and causes a forfeiture of employee status of strikers who participate in a strike during that period, only when recourse to strike action is for the purpose of effecting changes in existing contract terms. The statutory scheme is based on the hope that a sixty-day period of uninterrupted negotiation, with the help where necessary of federal and state conciliators, will produce agreement without the need for recourse to industrial strife. And

so the statute enjoins resort to a strike by a union or a lockout by an employer to compel either party to accede to the contract demands of the other before the expiration of the sixty days allotted to effecting agreement without self-help.

To give the prohibition against strikes or lockouts in Section 8(d) greater scope than this and make it applicable to unfair labor practice strikes leads to consequences so incongruous that it cannot reasonably be inferred that Congress meant to require them. As the court below pointed out (Pet. 37), such a reading of the Act would attribute to Congress

> * * * the intent not merely to provide for an orderly way to terminate or modify existing collective bargaining agreements but the intent both to give an employer, by taking advantage of the method, an opportunity to indulge in unfair labor practices which employees would, perhaps, find it to hazardous to resist quickly and effectively by means of a strike, and to require employees, who used the method, to do so on pain of giving the employer just such an opportunity. It would discriminate, in respect to the right to resist unfair labor practices by striking, between employees working under a collective bargaining contract and those who were not and between unions who were satisfied with such existing contracts and those who were not. And it would penalize the latter for attempting lawfully to remedy their condition

by peaceful bargaining. In view of the well known purpose of the Act to prevent industrial strife, such an intent should not be attributed to Congress until, and unless, it sees fit to say so in clear and uncertain terms.

The legislative history confirms what is clear on the face of Section 8(d), namely, that the Section has no application to strikes called to protest and remedy unfair labor practices, but is designed instead to provide an orderly method for negotiating successor agreements.[4] Indeed, Congress specifically rejected a proposed amendment which would have prohibited "any strike or other concerted interference * * * to remedy practices for which an administrative remedy is available" and would have deprived employees engaging in such activity

---

[4] S. Rep. No. 105, 80th Cong., 1st Sess., 24, in 1 Leg. Hist. 430; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 34-35, in 1 Leg. Hist. 538-539; see also, 93 Cong. Rec. 3839, in 2 Leg. Hist. 1015; 93 Cong. Rec. 5014, in 2 Leg. Hist. 1496.

To support the view that Section 8(d) prohibits an unfair labor practice strike during the 60-day period of notice, reliance is placed (Pet. 16, C15-16; B8) on statements of the opponents of the 1947 amendments to the Act, not specifically controverted by the proponents, to the effect that "provocative conduct" by the employer during this period must be countenanced without "resort to self-help" and is to be dealt with through a Board order to "'cease and desist' from such practices." S. Min. Rep. 105, 80th Cong., 1st Sess., 21-22, in 1 Leg. Hist. 483-484; 93 Cong. Rec. 6385, in 1 Leg. Hist. 887; 93 Cong. Rec. 4036, 6503, in 2 Leg. Hist. 1049, 1580. However, "The fears and doubts of the opposition are no authoritative guide to the construction of legislation." *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394; *S. H. Camp & Co. v. National Labor Relations Board*, 160 F. 2d 519, 521 (C. A. 6), and cases cited.

of "rights under the Act"—a proposal which would have cut down the right to strike, as here, against unfair labor practices.[5]

Contrary to petitioners' assertion, the decision of the Eighth Circuit in *Local No. 3, United Packinghouse Workers* v. *National Labor Relations Board*, 210 F. 2d 325, certiorari denied October 14, 1954, No. 124 this Term, is not inconsistent with the ruling below. The strike in that case was not, as here, an unfair labor practice strike; this fact, as the court below pointed out (Pet. B8), "serves to distinguish that case from this * * *." There, the employees struck to obtain a change in the current contract, the very situation Congress had in mind in enacting Section 8(d). The court held that economic strikers lost their status as employees by engaging in a strike before the expiration date of an existing contract even though the strike did not occur until 60 days after the giving of notice required by Section 8(d).

2. Petitioners further contend (Pet. 19-24) that the Board and the court below erred in concluding that (opinion below, Pet. B-4) "since the strike was caused and prolonged by the [petitioners'] unfair practices, * * * it is not prohibited by the strike-waiver clause in the contract." This argument raises merely a question as to the interpretation of the particular agreement in the instant

---

[5] H.R. 3020, 80th Cong., 1st Sess., Sec. 12(a)(3)(C)(ii), in 1 Leg. Hist. 205-207; S. 360, 80th Cong., 1st Sess., Sec. 13(b)(2) (Jan. 27, 1947). See also H. Rep. No. 245 on H. R. 3020, 80th Cong., 1st Sess., pp. 44, 95, in 1 Leg. Hist. 335, 386.

case, and as petitioners acknowledge (Pet. 19), "Normally, the question of whether particular conduct violates specific contractual commitments is too ephemeral a question to justify review by this Court." This statement of what is "normally" true is precisely applicable here. Moreover, the ruling of the Board and the court below, construing petitioners' contract with the Carpenters, is clearly correct.

Viewing the contract as a whole, it is evident that, as the court below held (Pet. B4-5), the inhibition imposed by the no-strike agreement "is operative only as regards strikes growing out of disputes concerning those matters covered by the contract provisions or arising out of the normal relations of the parties." The parties specified the substantive terms governing the employment relationship and bound themselves to abide by those terms for the duration of the agreement; the no-strike, no-lockout provision was a guarantee that there would be no resort to self-help to effect any change in the agreed terms during their life or to achieve any advantage sought in the normal day-to-day relations between the parties. Correlatively, since differences inevitably arise in the administration of any agreement, the parties also agreed upon binding arbitration as a peaceful means of adjusting such disputes; the no-strike, no-lockout provision guaranteed that there would be no stoppage over matters subject to arbitration. However, as the court below stated (Pet. B-5), "Unfair labor practices were in no way covered by the contract nor did the contract provide means for combating them

or settling disputes arising because of them."[6] As to such unlawful conduct by the employers (and petitioners do not question the findings of flagrant unfair labor practices on their part), the Carpenters nowhere relinquished the right to strike.

CONCLUSION

The decision below is correct and presents no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
HARVEY B. DIAMOND,
Attorney,
National Labor Relations Board.

DECEMBER 1954.

---

[6] After the Board's decision and order herein was issued, petitioners attempted to introduce further evidence concerning certain proposals made by the Carpenters during negotiation of the 1949 contract (Pet. B8). One of these proposals which petitioners would not accept was that "all disputes, whether or not arising from contract be referred to arbitration" (P. A. 1026). Petitioners' rejection of this proposal, instead of fortifying their position, suggests that the parties themselves contemplated an area of dispute which would not be covered by the contract terms, and in which resort to strike would therefore be permissible (Pet. B4-5). Cf. *National Labor Relations Board* v. *Rockaway News Co.*, 345 U. S. 71, 79-80.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or

discourage membership in any labor organization: * * *

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employes in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract

for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

* * * * *

☆ U. S. GOVERNMENT PRINTING OFFICE 1954. 91485G7 760